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**TITLE 327 WATER POLLUTION CONTROL BOARD**

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**FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**  
LSA Document #12-512**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING A VARIANCE FROM THE WATER QUALITY STANDARD FOR CHLORIDE****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to append to [327 IAC 2-1.5-17](#) the variance from the chloride water quality standard and resultant water quality-based effluent limitation requested by and granted to the city of Angola. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [327 IAC 2-1.5-17](#); [327 IAC 5-3-4.1](#).

**AUTHORITY:** [IC 13-14-9](#).

**STATUTORY REQUIREMENTS**

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [\[IC 13-14-9-3\]](#)... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

**BACKGROUND**

According to [327 IAC 5-3-4.1\(m\)](#), "All variances shall be appended to the water quality standards rules, [327 IAC 2-1](#) or [327 IAC 2-1.5](#) during the triennial review process." The city of Angola requested a variance from the chloride standard because of hardship or burden in meeting the resulting National Pollutant Discharge Elimination System (NPDES) permit limit. The commissioner has evaluated the variance application and approved the requested variance on March 5, 2012, so must also include the variance for Angola's chloride limit in [327 IAC 2-1.5-17](#). The variance is in effect throughout the duration of Angola's NPDES permit and may be renewed as the permit is reissued or modified.

**[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law**

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

**Potential Fiscal Impact**

This rulemaking adds no fiscal impact to any entity but simply fulfills the existing requirement under [327 IAC 5-3-4.1\(m\)](#) to append a variance to the water quality standards. During the effective period of the variance, Angola's expense to meet its chloride permit limit should be less due to the variance than it would be to meet the water quality-based effluent limit from which the city requested and was granted a variance. However, Angola is required to make progress, under the terms of the compliance scheduled issued with the variance, toward meeting the water quality-based effluent limit; therefore, final fiscal impact on meeting the chloride limit is unchanged though achieved over a longer time period allowed by the granting of the variance.

**Public Participation and Work Group Information**

No work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel at (317) 232-8635 or (800) 451-6027 (in Indiana).

**Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Jessica Faust-Hamblin  
IDEM Small Business Regulatory Coordinator  
MC 60-04 IGCS W041  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 234-3997  
[smallbizombudsman@iedc.in.gov](mailto:smallbizombudsman@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386 or (800) 451-6027  
[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

## FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on appending Angola's chloride variance to the water quality standard rule as required under [327 IAC 5-3-4.1\(m\)](#). These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) According to the requirement of [327 IAC 5-3-4.1\(m\)](#), the chloride variance requested by the city of Angola and granted by the commissioner of IDEM on March 5, 2012, is appended to [327 IAC 2-1.5-17](#).
- (2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (3) The draft rule is hereby incorporated into these findings.

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Thomas W. Easterly  
Commissioner  
Indiana Department of Environmental Management

## REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:  
LSA Document #12-512 (Angola Chloride Variance)  
MaryAnn Stevens  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue

MC 65-45

Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 233-8903. Please note it is not necessary to follow a faxed comment letter with a copy of the letter submitted through the postal system.

(3) By electronic mail to [mstevens@idem.in.gov](mailto:mstevens@idem.in.gov). To confirm timely delivery of your comments, please request a document receipt when you send the electronic mail.

**PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking you are commenting on.

#### COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than October 12, 2012. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).

#### DRAFT RULE

SECTION 1. [327 IAC 2-1.5-17](#) IS AMENDED TO READ AS FOLLOWS:

#### [327 IAC 2-1.5-17](#) Variances from water quality standards for point sources

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 4-22-2](#); [IC 13-11-2-24](#); [IC 13-13-5](#); [IC 13-18-4](#); [IC 13-18-7](#); [IC 13-23-13](#); [IC 13-24-1](#); [IC 13-25-5](#); [IC 13-30-2-1](#)

Sec. 17. (a) A permit applicant or permittee may apply to the commissioner for a variance from the water quality standard used to derive a water quality-based effluent limitation (WQBEL) contained in a NPDES permit for a specific substance. The application for such a variance shall be submitted in accordance with [327 IAC 5-3-4.1](#). The following do not constitute an undue hardship or burden. Therefore, a variance to a water quality standard shall not be granted:

- (1) that would likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the Endangered Species Act (ESA) or result in the destruction or adverse modification of such species' critical habitat;
- (2) if standards will be attained by implementing effluent limits required under Sections 301(b) and 306 of the Clean Water Act (CWA) and by the permittee implementing cost-effective and reasonable best management practices for nonpoint source control at the facility; or
- (3) to recommending dischargers or new Great Lakes dischargers, unless the new Great Lakes discharge occurs as the result of:
  - (A) a response action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended (as defined in [IC 13-11-2-24](#));
  - (B) a corrective action pursuant to the Resource Conservation and Recovery Act (RCRA), as amended (as defined in [IC 13-13-5](#)); or
  - (C) an action pursuant to similar federal or state authorities, including, but not limited to:
    - (i) an underground storage tank (UST) corrective action under [IC 13-23-13](#);
    - (ii) a remediation of petroleum releases under [IC 13-24-1](#);
    - (iii) a voluntary remediation under [IC 13-25-5](#); or
    - (iv) an abatement or correction of any polluted condition under [IC 13-18-7](#).

(b) The commissioner may approve all or part of a requested variance, or modify and approve a requested variance, if the permit applicant demonstrates that implementing a proposed methodology, that includes any production processes, wastewater treatment technology, or combination thereof used to reduce pollutants discharged in the wastewater from a facility, as identified under [327 IAC 5-3-4.1\(b\)\(2\)\(A\)](#), will cause an undue hardship or burden upon the applicant.

(c) In making a determination on a variance application, the commissioner shall balance the increased risk to human health and the environment if the variance is granted against the hardship or burden upon the applicant if the variance is not granted so that the commissioner is able to conclude that any increased risk is consistent with the protection of the public health, safety, and welfare. In balancing these factors, the commissioner shall consider the following to determine if the hardship or burden upon the applicant is undue:

(1) For variance applications, except those governed under subdivision (2), the following shall be considered:

- (A) The cost and cost effectiveness of pollutant removal by implementing the methodologies proposed by the applicant and the methodology capable of attaining the WQBEL.
- (B) The reduction in concentrations and loadings of pollutants attainable by the methodologies proposed by the applicant as compared with the reduction attainable by use of the methodology capable of attaining the WQBEL.
- (C) The impact of the proposed methodologies and the methodology capable of attaining the WQBEL on the price of the goods or services provided by the applicant.
- (D) Information on the relative price of goods or services in the same market as the applicant.
- (E) The overall impact of attaining the WQBEL and implementing the proposed methodologies on employment at the facility.
- (F) Information on the type and magnitude of adverse or beneficial environmental impacts, including the net impact on the receiving water, resulting from the proposed methodologies that could be applied to the control of the substance for which a variance is applied. This information shall include the extent of any increased risk to human health and the environment associated with each of the proposed methodologies.
- (G) Other relevant information requested by the commissioner or supplied by the applicant or the public.

(2) For variance applications where the necessity for the variance is a short-term, temporary discharge resulting from the dredging of contaminated sediments from a waterbody and is conducted under any of the federal or state authorities listed under subsection (a)(3), the following shall be considered:

- (A) The cost and cost effectiveness of pollutant removal by implementing the methodologies proposed by the applicant and the methodology capable of attaining the WQBEL.
  - (B) The reduction in concentrations and loadings of pollutants attainable by the methodologies proposed by the applicant as compared with the reduction attainable by use of the methodology capable of attaining the WQBEL.
  - (C) Information on the type and magnitude of adverse or beneficial environmental impacts, including the net impact on the receiving water, resulting from the proposed methodologies that could be applied to the control of the substance for which a variance is applied. This information shall include the extent of any increased risk to human health and the environment associated with each of the proposed methodologies.
- In considering the information required by this clause, the commissioner shall also consider that the action is the following:

- (i) For the protection, maintenance, or restoration of the environment.
  - (ii) Short-term and temporary.
- (D) Other relevant information requested by the commissioner or supplied by the applicant or the public.

(d) The commissioner may grant the variance when the requirements of subsections (b) and (c) are met.

(e) A determination to grant or deny a requested variance shall be made in accordance with [327 IAC 5-3-4.1](#). In making this determination, the commissioner may also consider other information available to the agency or supplied by the applicant or the public.

(f) A variance applies only to the permit applicant requesting the variance and only to the substance specified in the variance application. The granting of a variance does not imply or require that the water quality standard corresponding to the variance be modified through a rulemaking in accordance with [IC 4-22-2](#) and [IC 13-14-9](#).

(g) A variance or any renewal thereof shall not be granted for a term greater than that allowed by [IC 13-14-8](#). Notwithstanding the time at which the application for a variance is submitted under [327 IAC 5-3-4.1](#), a variance shall not be granted for a term greater than the term remaining under the permit to which the variance is attached.

(h) Neither the filing of a variance application nor the granting of a variance shall be grounds for the staying or dismissing of or a defense in a pending enforcement action. A variance shall be prospective only.

**(i) The following variance from water quality standards found at section 8 of this rule has been granted:**

Table 17-1

## Variances from Water Quality Standards

Waterbody	Affected Discharger	Starting Location	Ending Location	Substance	Variance Limit (mg/L)
H.D. Wood Ditch and Mud Creek	IN0021296	Angola WWTP Outfall 001	Confluence with Pigeon Creek	Chloride	768 Monthly Average 1,056 Daily Maximum

(Water Pollution Control Board; [327 IAC 2-1.5-17](#); filed Jan 14, 1997, 12:00 p.m.: 20 IR 1409; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)

[Notice of Public Hearing](#)

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An [html](#) version of this document.